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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 554

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, LOCAL 550, TWU, AFL-CIO, a labor organization, et al., *Petitioners*,

v.

TRANSPORT WORKERS UNION OF AMERICA, a labor organization, et al.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, No. 550, TWU, AFL-CIO, a labor organization, ROWLAND K. QUINN, JR., JANETTE HEISLER, HELEN CHASE, NANCY COLLINS, BARBARA ROADS, IRVING ROSEN, AND BEVERLY NELSON, individually and on behalf of all members of the AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, LOCAL 550, TWU, AFL-CIO, *Petitioners,*

v.

TRANSPORT WORKERS UNION OF AMERICA, a labor organization, MICHAEL J. QUILL, MATTHEW GUINAN, JAMES F. HORST, FREDRIC A. SIMPSON, CHARLES NELSON, AND MICHAEL F. CICCIA, individually and on behalf of all members of a certain class.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Air Line Stewards and Stewardesses Association, Local 550, TWU, AFL-CIO, a labor organization, Rowland K. Quinn, Jr., Janette Heisler, Helen Chase, Nancy Collins, Barbara Roads, Irving Rosen and

Beverly Nelson, individually and on behalf of all members of the Air Line Stewards and Stewardesses Association, Local 550, TWU, AFL-CIO, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on July 14, 1964 (Appendix A hereto, p. 1a, *infra*).

OPINIONS BELOW

The opinion of the Court of Appeals, printed in (Appendix B hereto, pp. 1a-8a, *infra*) is reported at 334 F. 2d 805. The United States District Court for the Northern District of Illinois, Eastern Division, did not issue any opinion. Its findings of fact (D.A. 317-353),[1] conclusions of law (D.A. 353-356), and preliminary injunction (D.A. 356-359) are not officially reported but are unofficially reported in 55 LRRM 2711.

JURISDICTION

The judgment of the Court of Appeals was entered on July 14, 1964 (Appendix A, p. 1a, *infra*). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1). A petition for rehearing duly filed was denied on August 21, 1964.

QUESTIONS PRESENTED

1. Whether removal of a union member from the office of president of a local without a fair hearing constitutes discipline of the member within the meaning of Section 101(a)(5) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 411(a)(5).

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[1] D.A. denotes the "Appendix of Defendants-Appellants" printed for the Court of Appeals. P.A. denotes the "Appendix of the Plaintiffs-Appellees." Nine copies of each appendix have been supplied for use in this Court.

2. Whether in a suit in which the federal district court had jurisdiction under Sections 302 and 304 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 462 and 464, to remedy an unlawful trusteeship, the court of appeals properly held that the formal termination of the trusteeship while the case was on appeal rendered the case moot and terminated the jurisdiction of the federal courts to restore the president of the local to office, and enjoin further interference by the international, despite the undisturbed findings of fact by the district court that the unlawful removal by the international of the president of the local was an integral part of the unlawful imposition of the trusteeship which would impose continuing irreparable injury unless he was restored to office.

3. Whether protection of the right to vote for union officers accorded members by Section 101(a)(1) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 411(a)(1), includes the right of members of a local to have their votes given effect by restoring to the office of president of a local the duly elected president thereof who was unlawfully removed by the international as soon as the votes were counted.

4. Whether a federal district court, having jurisdiction under Sections 302 and 304 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 462 and 464, of a claim that the international has unlawfully imposed a trusteeship on a local, also has jurisdiction of a state cause of action for the arbitrary removal by the international of the president of the local where the district court finds that the evidence introduced on the issue of the ille-

gality of the trusteeship also establishes the illegality under state law of the removal of the president.

STATUTES INVOLVED

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C.A. Supp. 401 *et seq.*, are set forth in Appendix C, pp. 8a-14a, *infra.*

STATEMENT

The instant case was begun in the United States District Court for the Northern District of Illinois, Eastern Division, by the Air Line Stewards and Stewardesses Association, Local 550, TWU, AFL CIO, hereinafter called ALSSA, Rowland K. Quinn, Jr., the duly elected president of ALSSA, and various other officers and members, suing in certain counts of the complaint on behalf of themselves and in other counts on behalf of all other members of ALSSA (D.A. 1-35). The defendants were the Transport Workers Union of America, hereinafter called TWU, and various of its officers (D.A. 5), also sued in some counts as representatives of the class composed of TWU members who are not also members of ALSSA (D.A. 23).

The complaint alleged that TWU had placed ALSSA in trusteeship in violation of the TWU constitution and in violation of Sections 302, 304 and 501 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 462, 464 and 501 (D.A. 6-10) and had removed Rowland K. Quinn, Jr., from the office of president of ALSSA without a fair hearing in violation of Section 101(a)(5) of said Act, 29 U.S.C.A. Supp. 411(a)(5) (D.A. 10-22). Jurisdiction of the federal district court was invoked under Sections 102, 304(a) and (b) and 501(b) of the Labor-Management

Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 412, 464(a) and (b) and 501(b) (D.A. 1-2).

Prior to the filing of an answer to the complaint the petitioners moved for a preliminary injunction and the district court conducted a five-day trial on the motion for preliminary injunction (D.A. 317).

The relevant facts as found by the district court and as shown by the evidence are as follows:

In an election conducted by a secret mail referendum among all the members of ALSSA in May and June, 1963, the results of which were certified on June 26, 1963, Rowland K. Quinn, Jr., a long time member of ALSSA, was elected president of ALSSA for a two year term beginning July 1, 1963 and terminating June 30, 1965 (D.A. 318, 330).

On June 27, 1963, the day following the certification of the results of the election, without any prior notice, charges or hearings, TWU imposed a trusteeship on ALSSA, and appointed Fredric A. Simpson as trustee with directions to take possession and control of all of the property of ALSSA and to have the sole and exclusive authority to speak and act for ALSSA and to administer its affairs (D.A. 330; P.A. 31, 33, 228-229, 241, 242, 263-264, D.A. 206-207). At all times after June 27, 1963, TWU treated the charter, constitution and by-laws of ALSSA as suspended and refused to permit any officer or committee of ALSSA to function without the consent and approval of Fredric A. Simpson as trustee of ALSSA (D.A. 330-331; P.A. 29-30, 48-49, 117, 183-184). At no time either before or after June 27, 1963, did TWU or any of its officers, committees or agents, give any hearing to ALSSA with respect to the propriety of the trusteeship (D.A. 331; P.A. 31-32, D.A. 203).

The president of TWU, Michael J. Quill, served charges dated July 10, 1963, on Rowland K. Quinn, Jr., alleging that in various respects he had failed to carry out his obligations as president of ALSSA (D.A. 332-333; P.A. 248-252). Said charges did not specify any section of any constitution as having been violated but did set forth certain respects in which it was alleged that Quinn had conducted the affairs of ALSSA in a manner detrimental to the interests of ALSSA and of TWU (D.A. 332-333; P.A. 248-252).

On July 17, 1963, the duly elected Executive Board of ALSSA, at a duly constituted meeting with a quorum present, unanimously adopted a resolution denouncing the purported trusteeship as a violation of the autonomy of ALSSA and authorized the hiring of the law firm of Leibik and Weyand to resist the illegal and wrongful trusteeship and removal of duly elected and qualified officers (D.A. 331-332; P.A. 29-30, 109, 176-177, 245-247). Said resolution has never been reconsidered or overriden or withdrawn by said Executive Board (D.A. 331-332; P.A. 184).

A hearing on the charges against Quinn was held by the International Executive Council of TWU on July 30 and 31, 1963 (D.A. 332-333). The hearing was unfair because it was conducted before a biased and partial body, counsel for TWU was present and active in the prosecution of Quinn although his lawyers were excluded, the hearing was conducted in an unfair manner, evidence was introduced against Quinn which he was not permitted to answer and there was no evidence to support the charges (D.A. 333-343, 354-355).

On August 1, 1963, the International Executive Council of TWU found the charges against Quinn had

been sustained and voted to remove him from the office of president of ALSSA (D.A. 345-346).

The reasons assigned by TWU for the imposition of the trusteeship and the removal of Quinn were mere pretexts (D.A. 346, 351-352). The real reason for the imposition of the trusteeship and the removal of Quinn was TWU's desire to secure full control of the income of ALSSA (D.A. 346, 352).

ALSSA, all its members and Quinn will suffer irreparable injury unless the trusteeship is terminated and Quinn is restored to office pendente lite (D.A. 352, 356).

The district court concluded that it had jurisdiction of the case under Sections 102, 304(a) and (b) and 501(b) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 412, 464(a) and (b) and 501(b), that the trusteeship violated Sections 302 and 304 of the Act, that each of the other members of ALSSA had been deprived of his equal right to have the candidate for which he voted serve when elected, that the removal of Quinn was an integral part of the imposition of the trusteeship, and that the removal of the trusteeship requires the restoration of Quinn to the office of president of ALSSA (D.A. 353-355).

The district court further determined that under the doctrine of pendent jurisdiction it had jurisdiction to restore Quinn to office since the issues with respect to the trusteeship and removal involved the same transactions and evidence, and Quinn's removal was improper under the applicable state law (D.A. 355-356).

The preliminary injunction order restored the status quo pendente lite by restoring Quinn to office and en-

joining the continuance of the trusteeship, any interference with Quinn in his performance of duties as president of ALSSA and any interference by TWU with the management and functioning of ALSSA (D.A. 356-357).

While an appeal from the preliminary injunction was pending in the court of appeals, TWU adopted a resolution terminating the trusteeship effective February 1, 1964, which was brought to the attention of the court below on motion of TWU to dismiss for mootness. Although petitioners filed several motions in the court of appeals for leave to present evidence showing the trusteeship was not moot supported by affidavits showing that the trusteeship was not terminated in fact as Simpson continued at all times after February 1, 1964, to file papers in the Illinois courts signed by him as trustee and TWU continued through Simpson or other officers of TWU to control the affairs of ALSSA, the court of appeals ruled that the trusteeship issue was moot (pp. 4a-5a, *infra*). The court of appeals also ruled that the federal courts had no jurisdiction to restore Quinn to office since the word member in Section 101(a)(5) did not include an officer (pp. 6a-7a, *infra*) and pendent jurisdiction was inapplicable as removal of an officer was a different cause of action from imposition of a trusteeship (pp. 7a-8a, *infra*). The court of appeals accordingly reversed the preliminary injunction (p. 8a, *infra*).

REASONS FOR GRANTING THE WRIT

1. This Court should review a construction of the Labor-Management Reporting and Disclosure Act which excludes arbitrary removal of a union officer from its provisions.

One of the primary purposes of Congress in adopting the Labor-Management Reporting and Disclosure Act of 1959 was to insure democracy within unions.[2] To construe, as the court below has done, the provisions of the statute as affording no protection against removal of a union officer without a fair hearing, obviously leaves a wide gap within which democracy in a union may be destroyed. For democracy in unions can never be assured by protecting members in their right to be members and vote, if as soon as they elect officers, such officers may be arbitrarily removed. Honesty and responsible leadership in unions will continue easily to be destroyed unless the leaders are protected against arbitrary removal. Members without leaders cannot do much.

The language of the statute read literally as applied to the facts of the instant case requires a different result. Section 101(a)(5), insofar as here material, provides:

> "No member of any labor organization may be * * * * disciplined * * * * unless such member has been * * * * (c) afforded a full and fair hearing."

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[2] S. Rep. No. 1417, 85th Cong., 2d Sess., Interim Report of the Select Committe on Improper Activities in the Labor Management Field, p. 452; S. Rep. No. 187, 86th Cong., 1st Sess., pp. 2, 5-7, 23, reprinted 1 Leg. His. LMRDA 398, 401-403, 419; H. Rep. No. 741, 86th Cong., 1st Sess., pp. 2, 5, 7, reprinted 1 Leg. His. LMRDA 760, 763, 765.

Rowland K. Quinn, Jr. was a member of a labor organization (D.A. 318). His removal from the office of president certainly constituted discipline by all generally accepted meanings of the word discipline (D.A. 354). He was not afforded a full and fair hearing (D.A. 333-343, 354, 355).

The language of the statute being clear and the plain meaning fully consistent with the purpose of the statute as manifested by its other provisions, there is no need to resort to legislative history to ascertain Congressional intent. However, if resort is had to the legislative history, there is extensive evidence that Congress was equally as concerned with insuring due process in the removal of an officer as in other penalization of members. The Bill of Rights provisions of the Labor-Management Reporting and Disclosure Act, including Section 101(a)(5), had its origins in proposals of the American Civil Liberties Union to assure democracy in trade unions.[3] From 1941 to 1943 this organization's Committee on Trade Union Democracy conducted hearings and in 1943 issued its report, in which it stated:[4]

> "Problems involving civil rights become very acute at those points where the trade union seeks to discipline individual members, officers, minority groups or local affiliates."

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[3] Stuart Rothman, Legislative History of the "Bill of Rights" for Union Members, 45 Minn. Law Rev. 199, 201 (December, 1960).

[4] American Civil Liberties Union, Democracy in Trade Unions, November, 1943, p. 27.

This report,[5] a supplement,[6] and revised versions[7] issued over the following years, contain discussions of instances of abuse by unions in the discipline of officers as well as collect constitutional provisions of unions expressly applicable to the discipline of officers. The draft of proposed legislation presented to Congress by representatives of the American Civil Liberties Union in 1958 so far as here material, provided:[8]

"Section II. Freedom of Election and Balloting

* * *

"1. * * *

* * *

"c. * * * No elected officer shall be removed from office except after reasonable notice and a fair hearing on the charges.

* * *

"Section VI. Due Process Within Unions

* * *

"2. No labor organization shall fine, suspend, expel, penalize or otherwise discipline any mem-

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[5] *Id.*, pp. 31, 36, 38.

[6] American Civil Liberties Union, Democracy in Trade Unions—Supplement with desirable provisions from trade-union by-laws, November, 1943, pp. 1, 4.

[7] American Civil Liberties Union, Democracy in Trade Unions, June, 1952, p. 9; American Civil Liberties Union, A Labor Union "Bill of Rights" Democracy in Trade Unions, the Kennedy-Ives Bill, September, 1958, pp. 5, 15, 16.

[8] Hearings before Subcommittee on Labor of Committee on Labor and Public Welfare, U.S. Senate, 85th Cong., 2d Sess., on Union Financial and Administrative Practices and Procedures, 1958, pp. 1118-1119. Earlier legislative proposals made no express reference in this connection to officers but used either the term "member" or "person." American Civil Liberties Union, Democracy in Trade Unions, November, 1943, p. 79; Hearings on Bills to Amend and Repeal the NLRA, 80th Cong., 1st Sess., 1947, p. 3635.

ber for any wrongful act without a fair hearing at which these due process protections are guaranteed: * * *

"3. Charges under the procedure described in 2 may be brought by union officials against members or by members against union officials."

In the hearings before the McClellan Committee[9] instances of removal of officers without a fair hearing appeared and the bill introduced by Senator McClellan expressly provided that an elected officer of a union could only be removed after notice and hearing.[10]

During the debates preceding enactment of the Labor-Management Reporting and Disclosure Act, supporters of the proposed bill of rights amendment referred to the need to protect union officers from removal from office without due process.[11] Opponents attacked Section 101(a)(5) on the ground it prohibited suspension of a local union officer for corruption without affording a hearing prior to suspension.[12] Their objection was based on the ground that while the procedures were going on the union officer might "be looting the union's treasury, or violating any number of

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[9] S. Rep. No. 1417, 85th Cong., 2d Sess., Interim Report of the Select Committee on Improper Activities in the Labor Management Field Pursuant to S. Res. 74 and 221, 85th Cong., pp. 126-127, 131; Hearings before Subcommittee on Labor and Public Welfare, U.S. Senate, 85th Cong., 2d Sess., on Union Financial and Administrative Practices and Procedures, 1958, pp. 521-523, 584, 676, 684.

[10] Section 302(a)(9) of S. 1137, 86th Cong., 1st Sess., as referred, reprinted in 1 Leg. His. LMRDA 298.

[11] 2 Leg. His. LMRDA, p. 1115, col. 1, p. 1116, col. 3, p. 1105, col. 1.

[12] *Id.*, p. 1573, col. 2.

its laws, or leading to open rebellion.'"[13] No Senator or Congressman took the view that an officer should not be assured due process before his removal became final—the only contention was that suspension prior to charges and hearing should be permitted.[14]

The sole bit of legislative history to support the view that the word member in Section 101(a)(5) does not include officers and hence nothing therein protects an officer from removal without due process is a statement to this effect by Senator Kennedy,[15] which was relied upon by the court below (p. 7a, *infra*). In his statement Senator Kennedy purported to be stating the position of the Conference Committee. We read the Conference Report differently. We believe the Conference Committee distinguished between removal and suspension. It stated:[16]

> "In paragraph (5), relating to safeguards against improper disciplinary action, it should be noted that the prohibition on suspension without observing certain safeguards applied only to suspension of membership in the union; it does not refer to suspension of a member's status as an officer of the union."

We read this statement as meaning that because the word suspend is limited by the word member the language "no member * * * may be * * * suspended" makes the suspension referred to mean only a suspension from membership. This reading follows the view

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[13] *Ibid.*

[14] *Id.*, p. 1573, cols. 2, 3, p. 1667, col. 3, p. 1668, col. 1.

[15] *Id.*, p. 1433, col. 1.

[16] H. Rept. No. 1147, 86th Cong., 1st Sess., p. 31, reprinted 1 Leg. His. LMRDA 935.

expressed by Senator McClellan in the debates that suspension pending a hearing is not discipline.[17] Since removal of a member from office is clearly discipline of a member, such a construction permits suspension pending a future hearing without a preceding hearing while requiring notice, charges and hearing preceding removal from office. We accordingly submit that Senator Kennedy misread the Conference Report when he stated that the conferees agreed this provision does not relate to "removal" from union office.[18]

The long, arduous struggle to promote democracy in unions by protecting honest leaders from arbitrary removal from office should not be nullified by this one mistaken reading of the Conference Report.

The well rounded scheme of protecting democracy in unions which appears on the face of the Labor Management Reporting and Disclosure Act becomes distorted by the construction of Section 101(a)(5) as not applicable to the removal of an officer. Either member or discipline in this section has a different meaning from the same word in all other provisions of the statute or the other provisions must be given a construction which neither the plain language nor the legislative history supports. See discussion and quotation from *King* v. *Grand Lodge, I.A.M., infra*, pp. 16-19.

But if Section 101(a)(5) is not applicable, it must be held that members of the union other than the removed officer are protected in the right to have him restored to office, either because his removal deprived them of their votes or constituted an unlawful trusteeship.

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[17] 2 Leg. His. LMRDA, p. 1295, col. 1.

[18] *Id.*, p. 1433, col. 1.

When the argument was first made that Section 101 (a)(5) did not embrace officers, the district court at once pointed out that the right of the members of ALSSA other than Quinn were protected by Section 101(a)(1) in their right to vote for Quinn, a right which would be meaningless if the day after their votes were counted, TWU could arbitrarily remove Quinn from office (P.A. 9-10, 16-17). The district court accordingly, as an alternative finding which by itself fully supports the preliminary injunction order restoring Quinn to office pendente lite, determined that the six union members other than Quinn who were plaintiffs "and each of the other members of ALSSA has been, by the action of the TWU in removing Rowland K. Quinn, Jr., from the office of president of ALSSA, deprived of his equal right to have candidates for which he voted serve when so elected" (D.A. 355). Since Section 102 confers jurisdiction on the federal district courts to enforce this right, the preliminary injunction issued was within the jurisdiction of the district court. The court of appeals ignored this basis for jurisdiction in reversing. The petition for rehearing (pp. 7-9) reminded the court of appeals of this basis for the order.

The American Civil Liberties Union in its reports leading to the adoption of this legislation took the position that the protection of the ballot included protection of the elected official from arbitrary removal. It stated:[19]

> "The third essential protection of the election process is that qualified persons elected to positions by the membership be allowed to serve. If a

[19] American Civil Liberties Union, Democracy in Labor Unions, June, 1952, p. 9.

> local union officer is arbitrarily removed by the international officers, * * * it is not merely the officer * * * who is injured. The whole local membership has been deprived of their ballot.
>
> * * *
>
> "The right of an individual within his union includes the right to express through his ballot his choice as to union policies and union leadership. He is entitled to a vote free from fear, honestly counted and diligently followed."

Likewise the district court, in the circumstances of this case, very properly viewed the removal of Quinn as an integral part of the trusteeship and his restoration to office as essential to remedy the unlawful imposition of the trusteeship (D.A. 355).

We regard these latter two bases for the preliminary injunction as sound, and present them as questions. If Section 101(a)(5) is not construed as embracing officers, we urge that this Court should clarify the extent to which other provisions of the statute apply.

2. The construction of the word member in Section 101(a)(5) as not including an officer conflicts with the holding of the Ninth Circuit in Grand Lodge, I.A.M. v. King, petition for certiorari pending, No. 456, this term.

The only other court of appeals to consider whether Section 101(a)(5) applies to the removal from office of a member of a union is the Court of Appeals for the Ninth Circuit in *Grand Lodge, I.A.M.* v. *King,* petition for certiorari pending, No. 456, this term. There the district court, like the district court in the instant case, held Section 101(a)(5) applicable to removal of a union officer. *King* v. *Grand Lodge, I.A.M.,* N.D. Calif. S.D. 1963, 215 F. Supp. 351, 354. The Ninth Circuit affirmed the ruling of the district court that the

complaint stated a good cause of action but based its decision on different grounds. Contrary to the decision of the court of appeals in the instant case, the Ninth Circuit held that member in Section 101(a)(5) included an officer. However, it held no violation of Section 101(a)(5) was present because removal from office did not constitute discipline within the meaning of this section. Nevertheless it sustained the complaint as stating a cause of action because removal of an officer did constitute discipline within the meaning of Section 609, a catch all section making it unlawful for a union "to fine, suspend, expel or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act." The facts alleged in that case showed that the removal resulted from the exercise by the plaintiffs of political rights and freedom of speech and assembly guaranteed to members by Section 101(a)(1) and (2). In holding that the word member throughout the statute included officers the Ninth Circuit stated (56 LRRM 2639, 2641):

> "* * * sections 101(a)(1) and (2) apply in terms to 'every member,' and nothing in the statutory language excludes members who are officers.[11] Nor is there any intimation in the legislative history that Congress intended these guarantees of equal political rights and freedom of speech and assem-

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"[11] This is also true of other sections of Title I. Our conclusion that § 101(a)(5) is inapplicable to the present case is based upon the conclusion that one removed from office is not 'otherwise disciplined' within the meaning of § 101(a)(5), rather than upon a reading of the word 'member' in that section as excluding officers. See note 8.

bly to be inapplicable to officer-members.[12] The general purpose of the Act argues to the contrary. The guarantees of sections 101(a)(1) and (2) were adopted to strengthen internal union democracy.[13] To exclude officer-members from their

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"[12] Defendants call attention to the fact that as § 101 (a)(4) originally passed the Senate it applied to 'members or officers,' and the words 'or officers' were deleted in conference. S. 1555, 86th Cong., 1st Sess. § 101(a)(4)(1959), 1 Leg. His. LMRDA 520; H.R. 8490, 86th Cong., 1st Sess. § 101 (a) (4) (1959), 1 Leg. His. LMRDA 877. Defendants argue that this change evidences a congressional understanding that union officers were excluded from the whole of Title I. See Judge Kalodner's opinion in *Sheridan* v. *United Bhd. of Carpenters & Joiners*, 306 F. 2d 152, 156-57, 50 LRRM 2637 (3rd Cir., 1962).

"The language change in § 101(a)(4) was made without comment of any sort. Prior to the change, it was assumed in Senate debate that officers-members were included in § 101(a)(4) (see remarks of Senator Mundt at 105 Cong. Rec. 6478 (1959), 2 Leg. His. LMRDA 1105). Thus defendants' argument requires the inference that the Conference Committee drastically narrowed the assumed coverage of § 101(a)(4) with no explanation whatever. A more reasonable conclusion is that the Conference Committee recognized that the deleted words 'or officers' were surplusage since as a practical matter union officers were also union members, and therefore deleted these words to conform § 101(a)(4) in style with other sections of Title I which used only the inclusive word 'members.'

"[13] See, e.g., Murphy, The Background of the Bill of Rights and Its Provisions, Symposium on the Labor-Management Reporting and Disclosure Act of 1959, 277-78 (Slovenko ed. 1961); Summers, The Law of Union Discipline: What the Courts do in Fact, 70 Yale L.J. 175 (1960); Aaron, The Labor-Management Reporting and Disclosure Act of 1959, 73 Harv. L. Rev. 851, 855-57 (1960); Cox Internal Affairs of Labor Unions under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819 (1960); Smith, The Labor-Management Reporting and Disclosure Act of 1959, 46 Va. L. Rev. 195, 201 (1960); Summers, The Impact of Landrum-Griffin in State Courts, 13th Annual Conference on Labor 333, 335 (1960).

coverage would deny protection to those best equipped to keep union government vigorously and effectively democratic. We therefore conclude that sections 101(a)(1) and (2) apply to officer-members such as plaintiffs.[14]

"[14]. The Second Circuit held § 101(a)(2) applicable to an officer-member in *Salzhandler* v. *Caputo*, 316 F. 2d 445, 52 LRRM 2908 (2d Cir., 1963); Comments 77 Harv. L. Rev. 770 (1964), and 73 Yale L. J. 426 (1964). Cf. Judge Kalodner's opinion in *Sheridan* v. *United Bhd. of Carpenters & Joiners*, 306 F. 2d 152, 156, 50 LRRM 2637 (3d Cir. 1962)."

The word member in Section 101(a)(1) and (2) was construed to include officers by the Second Circuit in *Salzhandler* v. *Caputo*, 316 F. 2d 445, 449-451. The word member in Section 101(a)(4) was construed to include officers by Judge McLaughlin dissenting in *Sheridan* v. *Brotherhood of Carpenters*, 3d Cir., 1962, 306 F. 2d 152, 165-167, where Judge Kalodner disagreed and where Judge Hastie did not reach this question.

These seeming conflicts with respect to an important issue require resolution by this Court.

3. The pendent jurisdiction issue presented typifies a state of uncertainty and confusion among the circuits which should be clarified by the Court.

As an alternative ground of jurisdiction over the claim of Quinn for restoration to his position as president of ALSSA, the district court held the doctrine of pendent jurisdiction applicable. Its determination in this regard was stated as follows (D.A. 365-366):

"The issues with respect to the removal of Rowland K. Quinn, Jr., from the office of president of ALSSA involve the same transaction and evidence as is involved in the issues with respect to the

> trusteeship and therefore under the doctrine of pendent jurisdiction this court has jurisdiction to determine and does determine that Rowland K. Quinn, Jr., under the applicable laws of the States of Illinois and New York was improperly and unlawfully removed from the office of president of ALSSA and is entitled to be restored to such office."

The court of appeals held that the doctrine of pendent jurisdiction was inapplicable because of the absence of the single cause of action or wrong requisite under this Court's decision in *Hurn* v. *Oursler,* 289 U.S. 238 (1933). The court of appeals stated (p. 8a, *infra*):

> "The facts supporting a suit for restraint of a trusteeship and one for reinstatement of a union official are not substantially the same because they do not constitute a single wrong."

This construction of *Hurn* v. *Oursler* is contrary in principle to the construction adopted by the First, Second, Third, Fourth, Sixth and Ninth Circuits.[20]

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[20] *Mansoky* v. *Bethlehem-Hingman Shipyard, Inc.*, 1st Cir., 1949, 177 F. 2d 529, 534, holding recovery of incentive payments under state contract law pendent to overtime claim under Fair Labor Standards Act; *Strachman* v. *Palmer,* 1st Cir., 1949, 177 F. 2d 427, 429-430, holding that although the Interstate Commerce Act on which federal jurisdiction rested, did not apply to shipments to Canada, the district court should have accepted pendent jurisidiction over state claim for negligent damage to goods while in transit to Canada; *Hazel Bishop, Inc.* v. *Perfumme, Inc.,* 2d Cir., 1963 314 F. 2d 399, affirming an injunction against breach of contract although reversing as to trade mark infringement and unfair competition, the latter two affording the only basis for federal jurisdiction; *Cromwell* v. *Hillsborough Township,* 3rd Cir., 1945, 149 F. 2d 617, 620, affirming a judgment finding that a New Jersey tax assessment was invalid for failure to follow New Jersey statutory procedures, though federal jurisdiction was based on a claim

In these other courts the doctrine of pendent jurisdiction is used to preserve judicial economy and prevent parties from having to repeat the same evidence and the same witnesses in both federal and state courts. The test is not whether the state and federal law provide the same or related legal remedies but whether the evidence necessary for the federal cause of action would need to be reintroduced in whole or substantial part in the state courts if the federal courts declined to pass on the state cause of action.

In the instant case the court below conducted a trial for five days, the transcript of which is 1690 pages long, heard seventeen witnesses (D.A. 317), and received in evidence more than eighty exhibits. All of this evidence was equally applicable to both the legality of the trusteeship and to the legality of the removal of Quinn from office. To now require that in order to obtain a state remedy the plaintiffs must repeat this trial in the state courts renders our Federal state sys-

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of federal unconstitutionality which the court did not reach; *Rumbaugh* v. *Winefrede R.R. Co.*, 4th Cir., 1964, 331 F. 2d 530, 539-540, holding state claims for damages for wrongful discharge and conspiracy pendent to claim for unfair representation based on *Steele* doctrine; a series of cases in the Sixth Circuit resting on a claim of secondary boycott under Section 303 of the Taft-Hartley Act, 29 U.S.C. 187, where recovery for state tort claims of violence to property was granted: *White Oak Coal Co.* v. *U.M.W.A.*, 318 F. 2d 591, 593, 600, certiorari denied, 375 U.S. 966; *Gilchrist* v. *U.M.W.A.*, 290 F. 2d 36, 39, certiorari denied, 368 U.S. 875; *Flame Coal Co.* v. *U.M.W.A.*, 303 F. 2d 39, 42, 43, certiorari denied, 371 U.S. 891; *U.M.W.A.* v. *Osborne Mining Co.*, 279 F. 2d 716, 724, certiorari denied, 364 U.S. 881; *U.M.W.A.* v. *Meadowbrook Coal Co.*, 263 F. 2d 52, 59, certiorari denied 359 U.S. 1013; *Addison* v. *Grand Lodge*, 9th Cir., 1963, 318 F. 2d 504, holding claims that union discipline violated state law pendent to claimed violation of Section 101(a)(1) (2) and (5) of the Labor-Management Reporting and Disclosure Act.

tem a method of doubling legal costs, and duplicating the work of attorneys and judges.

While some of these cases, in addition to emphasizing the fact that the same proof supports both federal and non-federal claims, suggest a relation between the injuries involved, the relationship present is always described in broad terms such as dynamiting property and secondary boycott both are injuries to the business. On such a basis, the imposition of the trusteeship and the removal from office are related because they both constitute interference by the international with the right of members of the local to run their own union through their own officers. In both instances the international displaces local officers. That the relationship between the state and federal claims, aside from common evidence, should not be relevant is made clear by an excellent note analyzing the cases. Note: The Evolution and Scope of the Doctrine of Pendent Jurisdiction in the Federal Courts, 62 Colum. L. Rev. 1018 (1962). This note believes that reliance on the phrases used in *Hurn* is misleading (62 Column. L. Rev. at 1039, n. 66):

> "It would no doubt foster an intelligent approach to the doctrine if federal courts would henceforth explicitly recognize that it is the similarity of facts or proof that determines the requisite nexus between a substantial federal question and a pendent non-federal claim and that the 'single cause of action' terminology is little more than deceptive surplusage."

The note states the proper criteria as follows (62 Colum. L. Rev. at 1044-1045):

> "* * * the exercise of pendent jurisdiction must be judged by whether it furthers some federal policy. Measured by that test pendent jurisdic-

> tion serves two purposes. First, it ensures that litigants will not be dissuaded from maintaining their federal rights in a federal court solely because they can dispose of all claims by one litigation in the state but not in the federal forum.[145] When jurisdiction over the federal claim is exclusive in the federal judiciary, only pendent jurisdiction makes possible a complete remedy for vindication of the plaintiff's rights. Second, assuming that the litigants are in a federal forum, pendent jurisdiction serves the interest of avoiding piece-meal litigation, thus promoting judicial economy and greater expedition for the litigants.
>
> "[145]. Surely, the primary function of the federal judiciary is to provide a forum for the vindication of federal rights. * * * obstacles to joinder of related claims should not be permitted to restrain the parties' freedom to choose a federal forum."

This note collects the pertinent authorities and shows that there is an uncertainty among the courts which needs to be put at rest by clarification by this Court. The instant case is one which establishes the need for such clarification. It arises in a field where the problem of pendent jurisdiction will constantly recur. Almost all cases arising under the Labor-Management Reporting and Disclosure Act will involve facts and evidence also establishing state causes of action. In the instant case there can be no doubt but what the failure of TWU to accord Quinn a fair hearing (D.A. 333-335, 354-355) made his removal improper under both Illinois and New York law. Where as here (Article V, Section 5, of TWU Constitution, Plffs. Exh. 4, p. 10), the constitution of the organization requires a hearing, the Illinois courts construe the constitution as requiring a fair hearing. *O'Brien* v. *Matual,* 14 Ill. App. 2d 173, 144 N.E. 2d 446, 458; *Werner* v. *I.A.M.,* 11 Ill. App. 2d 258, 137 N.E. 2d 100, 111-112; *Ryan* v. *Cudahy,* 15 Ill. 108, 41 N.E. 760, 764.

The New York courts hold that a union may not remove an officer without a fair hearing. *De Stefano* v. *Papa,* 37 N.Y.S. 2d 950, 951, App. dismd. 265 App. Div. 919, 39 N.Y.S. 2d 413, reh. den. 265 App. Div. 991, 39 N.Y.S. 2d 987.

If in this case Quinn must start over again in the Illinois or New York courts, it will be apparent that use of the Labor-Management Reporting and Disclosure Act requires cumbersome and costly duplication of evidence in federal and state proceedings. Review by this Court is essential to define the proper scope of pendent jurisdiction.

CONCLUSION

The Labor-Management Reporting and Disclosure Act of 1959, has introduced into federal law a new and uncharted field of operations. The statute is detailed and complicated. Its proper construction is of great public importance. Here the facts found by the trial court disclose just the sort of violations of union democracy which the legislative history shows the statute was designed to correct. The decision by the court below that the district court was without jurisdiction to remedy these under either federal or state law calls for review and correction by this Court.

Respectfully submitted,

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APPENDIX A

Judgment of United States Court of Appeals for the Seventh Circuit

Entered July 14, 1964

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court granting the preliminary injunction, in this cause appealed from be, and the same is hereby, REVERSED, with costs, in accordance with the opinion of this Court filed this day.

APPENDIX B

Opinion of United States Court of Appeals for the Seventh Circuit

Entered July 14, 1964

Before CASTLE, KILEY and SWYGERT, *Circuit Judges.*

SWYGERT, *Circuit Judge.* We are asked to review the order of the district court granting plaintiffs' motion for a preliminary injunction. The case arises under the Labor-Management Reporting and Disclosure Act (Landrum-Griffin), 29 U.S.C.A. §§ 401-531 (1959).

Plaintiffs Air Lines Stewards and Stewardesses Association, Local 550, an affiliate of Transport Workers Union, AFL-CIO, seven members of the local, and three of its former employees sought an injunction, declaratory judgment, and damages against defendants Transport Workers Union (the international) and seven of its members, individually and on behalf of all members who were not also members of the local.

The complaint consisted of five counts. Specifically, in count one the local sought under section 304 of the Labor-Management Reporting and Disclosure Act termination of a trusteeship imposed by the international. In count two plaintiffs sought reinstatement of Rowland K. Quinn, Jr., who had been removed as president of the local by the international. Plaintiffs in count three requested the international be restrained from claiming that the local owes it $145,000. In count four the three employees who had been discharged by the administrator of the trusteeship requested reinstatement. In the last count Quinn sought damages for libel.

Defendants filed motions to dismiss. They were denied. On November 7, 1963, plaintiffs petitioned the district court for a preliminary injunction. The petition was granted. The injunction enjoined the trusteeship and reinstated Quinn to the office of president. This appeal is from the injunction.

Two issues presented to us are dispositive of the appeal: whether the issue of the legality of the trusteeship is moot and whether the district court had jurisdiction to reinstate Quinn.

I.

In June, 1963, the president of the international notified Quinn as president of the local that the international's administrative committee, with the approval of its executive council, pursuant to section 4 of article 18 of the international's constitution, had appointed Frederic Simpson administrator of the affairs of the local.[1] Quinn was told

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[1] Section 4 of article 18 provides:

> Should any local union, its officers, or members, engage in activities in violation of this Constitution, or of the principles or objects set forth herein, the International Administrative Committee may, in an emergency, with approval in writing or by telegram of a majority of the individual members of

that a disciplinary action was being instituted by the international against him in accordance with section 5 of article 5 of the international's constitution[2] and that Simpson would act as administrator pending the conclusion of the proceeding.

Quinn was charged with certain acts of misconduct: deceiving the local and the international about the local's finances; causing the treasurer of the local to file false financial reports; withholding knowledge from the international of a contract with two attorneys for a ten-year retainer contrary to his promise that in return for loans from the international he would notify it of obligations incurred by the local; submitting budgets limiting legal fees to $1,000 per month when he knew his agreement with

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the International Executive Council appoint an administrator of the affairs of such Local Union, who shall forthwith take over and conserve the assets of such Local Union and shall have sole and exclusive authority to speak and act for such Local Union and to administer its affairs pending conclusion of the procedure set forth in Section 4 or Section 5 of Article V.

[2] Section 5 of article 5 provides:

In the event the International President shall have reason to believe that any officer or member is failing to comply with any provision of the Constitution, or conducts himself in a manner which is detrimental to the best interest of the Union, he may institute proceedings upon the alleged violations, with due notice of hearing, specifying the section or sections of the Constitution violated or the nature of the conduct, before the International Executive Council, or a sub-committee thereof. Upon the basis of the hearing, the International Executive Council is authorized to render a decision, dismissing the charges, suspending, expelling or otherwise penalizing such officer or member, or directing such other action as may be necessary to secure compliance with the Constitution or otherwise to protect and preserve the effectiveness and best interests of the Union. The decision of the Internal Executive Council shall be subject to review by the International Convention.

the attorneys fixed the fees between $2,100 and $2,350 per month; and not opposing in a state court proceeding the attorneys' claim to a $75,000 fee from a fund belonging to the local.

The charges were heard by the international executive council; they were sustained and Quinn was removed as president. Thereafter and pursuant to the international's constitution, Coleen Boland, the vice president of the local, assumed the office of president with Simpson acting as administrator until the issuance of the preliminary injunction on December 11, 1963.

On January 28, 1964, the international notified the administrator that it was terminating the trusteeship and returning control of the union to the local's officers. The administrator was directed to effectuate the transfer on February 1, 1964.

The international asserts that the district court's order enjoining the trusteeship is no longer properly before this court because the action of the international terminating the trusteeship renders moot the question of the legality of the trusteeship.

Plaintiffs answer that the imposition of the trusteeship was illegal because Quinn was improperly removed as president and that the lifting of the trusteeship requires his restoration to that office; further, that there has been no effective termination of the trusteeship so long as the international has "the right to pick and name [Boland] the person to administer the affairs" of the local.

The constitution of the international and the by-laws of the local provide that whenever a vacancy in the office of president of the local occurs, the vice president shall act as president for the unexpired term. Pursuant to these provisions, Boland automatically succeeded Quinn. It is patent that the international did not arbitrarily choose her as his successor.

Although the imposition of the trusteeship and Quinn's deposition as president were interrelated, Quinn's removal did not perpetuate the trusteeship indefinitely nor did the termination depend upon Quinn's being restored to the presidency. Whether Quinn was rightfully removed from office is beside the point. The fact is he was removed and the international terminated the trusteeship for reasons other than the mandate of the district court. The issue relating to the trusteeship therefore became moot and is no longer before the district court. *Lanigan* v. *Local 9, Int'l Bhd. of Elec. Workers,* 327 F.2d 627 (7th Cir. 1964); *Vars* v. *International Bhd. of Boilermakers,* 320 F.2d 576 (2d Cir. 1963).

II.

Plaintiffs alleged in the second count of the complaint that Quinn's removal from office was in violation of section 101(a)(5) of the Labor Management Reporting and Disclosure Act in that he was deprived of a fair hearing on the charges filed against him.[3] Jurisdiction is based on section 102 of the act.[4]

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[3] § 101(a)(5), 73 Stat. 522, 29 U.S.C.A. § 411(a)(5) reads:

> No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

[4] § 102, 73 Stat. 523, 29 U.S.C.A. § 412 reads:

> Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

The district judge, after a full hearing on the motion for preliminary injunction, sustained plaintiff's allegations. Specifically, he found that Quinn was prevented from being represented at the union hearing by an attorney; that the international executive council which tried Quinn did not constitute an impartial tribunal; and that the evidence submitted to the council was insufficient to sustain the charges.

Although in the complaint Quinn alleged a violation of his rights as a member of the local, he made no specific averments; nor did the district judge refer in his findings to a violation of such rights. The essence of the judge's decision is that Quinn's right to continue as president was violated because of the unfairness of the union trial and the insufficiency of the evidence against him.

Defendants assert that the district court lacked jurisdiction to decide whether Quinn's removal as president was proper because the Labor-Management Reporting and Disclosure Act does not give federal courts jurisdiction to scrutinize internal union procedure for the removal of officers. A number of district courts have so held.[5]

Only one court of appeals has spoken on the subject. Although *Sheridan* v. *United Bhd. of Carpenters*, 306 F.2d 152 (3d Cir. 1962), involved section 609 of the act, 73 Stat. 541, 29 U.S.C.A. § 529, that section is closely related in subject matter and language to section 101(a)(5). There, Judge Kalodner expressed the view that neither title one of the act (which includes section 101(a)(5)) nor section 609 protects a union officer's status. "It is

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[5] *Mamula* v. *Local 1211, United Steelworkers*, 205 F. Supp. 915 (W.D. Pa. 1962); *Vars* v. *International Bhd. of Boilermakers*, 204 F. Supp. 241 (D. Conn. 1962); *Hamilton* v. *Guinan*, 199 F. Supp. 562 (S.D. N.Y. 1961); *Burton* v. *Independent Packinghouse Workers Union*, 199 F. Supp. 138 (D. Kan. 1961); *Jackson* v. *The Martin Co.*, 180 F. Supp. 475 (D. Md. 1960); *Strauss* v. *Teamsters Union*, 179 F. Supp. 297 (E.D. Pa. 1959).

the union-membership relationship, not the union-officer or union-employee relationship, that is protected."

The language of section 101(a)(5) supports this view. The section refers only to members; it does not mention officers. Moreover, the legislative history buttresses this interpretation.[6]

Section 101(a)(5) secures and protects members of a labor organization qua members but has no application to officers of the union qua officers. We hold, therefore, that the district court had no jurisdiction under section 102 of the act to entertain count two.

Plaintiffs' alleged basis for jurisdiction of the second count of their complaint was section 102. They now say the judge properly concluded as an alternative basis that the district court had pendent jurisdiction to reinstate Quinn. Although they cite no cases to support their position, plaintiffs maintain that under Illinois law an officer of a labor organization unfairly removed from office is entitled to reinstatement and that once the court acquired jurisdiction of the trusteeship issue it had pendent jurisdiction to decide the propriety of Quinn's removal.

We need not determine whether Illinois law affords the remedy plaintiffs claim because it is our opinion that the district court did not acquire jurisdiction to decide under state law whether Quinn was unfairly removed.

Hurn v. *Oursler,* 289 U.S. 238 (1933), shaped the doctrine of pendent jurisdiction of federal courts. According to that case in order to have pendent jurisdiction there must be a single cause of action or wrong arising out of one set of operative facts, ostensibly redressable by federal law but also redressable by state law.

The constitution of the international provides that misconduct of a union officer constitutes grounds for imposi-

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[6] Cong. Rec. 17899 (1959) (remarks of Senator Kennedy); 2 U.S. Cong. & Ad. News 2503-04 (1959).

tion of a trusteeship. Although the same circumstances may lead to both the imposition by the international of a trusteeship and the removal of an officer of the local, the consequences give rise to separate and distinct causes of action. The facts supporting a suit for restraint of a trusteeship and one for reinstatement of a union official are not substantially the same because they do not constitute a single wrong. Moreover, the remedy provided by federal law for the termination of an illegal trusteeship has no relation to the relief which state law may provide for the improper removal of a union officer.

The district court lacked jurisdiction to entertain the second count.

The order granting the preliminary injunction is reversed.

APPENDIX C

Statutes Involved

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C.A. Supp. 401, *et seq.*, are as follows:

"DEFINITIONS

"SEC. 3. For the purposes of titles I, II, III, IV, V (except section 505), and VI of this Act—

* * * * *

"(h) 'Trusteeship' means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

* * * * *

"TITLE I—BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

"BILL OF RIGHTS

"SEC. 101. (a)(1) EQUAL RIGHTS.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

* * * * *

"(5) SAFEGUARDS AGAINST IMPROPER DISCIPLINARY ACTION.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for non-payment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

"(b) Any provision of the constitution and bylaws of any labor organizataion which is inconsistent with the provisions of this section shall be of no force or effect.

"CIVIL ENFORCEMENT

"SEC. 102. Any person whose rights secured by the provision of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district

where the alleged violation occurred, or where the principal office of such labor organization is located.

* * * * *

"TITLE III—TRUSTEESHIPS

"REPORTS

* * * * *

"PURPOSES FOR WHICH A TRUSTEESHIP MAY BE ESTABLISHED

"SEC. 302. Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organizations.

* * * * *

"ENFORCEMENT

"SEC. 304. (a) Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this title (except section 301) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or subordinate body of a labor organization affected by any violation of this title (except section 301) may bring a civil action in any district court of

the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

(b) For the purpose of actions under this section, district courts of the United States shall be deemed to have jurisdiction of a labor organization (1) in the district in which the principal office of such labor organization is located, or (2) in any district in which its duly authorized officers or agents are engaged in conducting the affairs of the trusteeship.

(c) In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 302. After the expiration of eighteen months the trusteeship shall be presumed invalid in any such proceeding and its discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 302. In the latter event the court may dismiss the complaint or retain jurisdiction of the case on such conditions and for such period as it deems appropriate.

* * * * *

"TITLE IV—ELECTIONS

"TERMS OF OFFICE; ELECTION PROCEDURES

"SEC. 401. " • •

• • • • •

"(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

"(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, • • •

• • • • •

"(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this title.

• • • • •

"TITLE V—SAFEGUARDS FOR LABOR ORGANIZATIONS

"FIDUCIARY RESPONSIBILITY OF OFFICERS OF LABOR ORGANIZATIONS

"SEC. 501. (a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, * * *

* * * * *

"(b) When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) and the labor organization or its governing board of officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. * * *

* * * * *

"PROHIBITION ON CERTAIN DISCIPLINE BY LABOR ORGANIZATION

"SEC. 609. It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline

any of its members for exercising any right to which he is entitled under the provisions of this Act. The provisions of section 102 shall be applicable to the enforcement of this section."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 554

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, NO. 550, TWU, AFL-CIO, a labor organization, ROWLAND K. QUINN, JR., JANETTE HEISLER, HELEN CHASE, NANCY COLLINS, BARBARA ROADS, IRVING ROSEN, AND BEVERLY NELSON, individually and on behalf of all members of the AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, LOCAL 550, TWU, AFL-CIO,

Petitioners,

vs.

TRANSPORT WORKERS UNION OF AMERICA, a labor organization, MICHAEL J. QUILL, MATTHEW GUINAN, JAMES F. HORST, FREDRIC A. SIMPSON, CHARLES NELSON, AND MICHAEL F. CICCIA, individually and on behalf of all members of a certain class.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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OCTOBER TERM, 1964.

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AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, NO. 550, TWU, AFL-CIO, a labor organization, ROWLAND K. QUINN, JR., JANETTE HEISLER, HELEN CHASE, NANCY COLLINS, BARBARA ROADS, IRVING ROSEN, AND BEVERLY NELSON, individually and on behalf of all members of the AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, LOCAL 550, TWU, AFL-CIO,

Petitioners,

vs.

TRANSPORT WORKERS UNION OF AMERICA, a labor organization, MICHAEL J. QUILL, MATTHEW GUINAN, JAMES F. HORST, FREDRIC A. SIMPSON, CHARLES NELSON, AND MICHAEL F. CICCIA, individually and on behalf of all members of a certain class.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Respondents will confine themselves in this brief to a response to the Questions Presented, the Statement and the Reasons For Granting The Writ, as contained in the Petition. A considerable portion of the Petition is devoted to the merits of Petitioners' argument and to

an extensive and detailed development of supposed facts neither being germane to the consideration of whether certiorari is warranted in this case. To the extent possible, Respondents will omit a rebuttal to these matters not properly before the Court.

QUESTIONS PRESENTED.

Four questions are presented in the Petition as the basis of the request for the writ of certiorari. (Pet. 2-4.) A number of misstatements, misrepresentations and other improprieties are contained in the formulation of these questions. Since they constitute the very foundation of the Court's consideration of the Petition, we deem it essential to point out these deficiencies in some detail. This will be done in corresponding numerical order to the questions as presented in the Petition.

1. The first question should properly read as follows: Whether removal of a union member from the office of president of a local *for alleged misconduct in such office* constitutes discipline of the member within the meaning of Section 101 (a) (5) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 411 (a) (5).

This statement squarely presents the issue, since as shown in our Argument, *infra*, the reported cases in the lower federal courts distinguish between situations involving alleged misconduct as an officer and those involving alleged misconduct as a member.

2. Four misstatements or misrepresentations, as shown immediately below, reduce the second question to an empty and meaningless concoction: (a) The Court of Appeals found an "actual" termination of the trusteeship rather than the "formal" termination of the trusteeship, as suggested in Question 2. (Pet. 4a-5a.) (b) The Court of

Appeals did not find the entire case on appeal "moot" as suggested in Question 2. Only Count I of the Complaint, dealing with the trusteeship issue, was held to be moot. (Pet. 4a-5a; D.A. 2-10.) (c) The Court of Appeals did not hold that mootness of the trusteeship issue "terminated the jurisdiction of the federal courts to restore the president of the local to office, . . ." as suggested in Question 2. Petitioners are confusing the ruling of the Court below that Count I (trusteeship) was rendered moot with its ruling that there was no jurisdiction over Count II (removal of the president from office). (Pet. 5a-8a; D.A. 10-22.) (d) There is no finding of fact by the District Court that the unlawful removal by the international of the president of the local was an integral part of the unlawful imposition of the trusteeship which would impose continuing irreparable injury unless he was restored to office," as is asserted in Question 2. No such finding is contained in the findings of fact actually made by the Trial Court (D.A. 304-308); nor is any such finding contained in the lengthy findings of fact prepared by Petitioners. (D.A. 317-353.) We do find conclusions to this effect in the conclusions of law, which were also prepared by Petitioners. (D.A. 355-356.) Since these legal conclusions were reversed by the Court of Appeals below, it is a gross impropriety for the Petitioners to insert them as undisturbed findings of fact in Question 2 posed to this Court.

3. In the third question, Petitioners misrepresent that the duly-elected president "was unlawfully removed by the international as soon as the votes were counted." According to the findings of fact prepared for the Trial Court by Petitioners, the election was conducted by mail referendum in May and June of 1963. The results were certified on June 26, 1963 and the president was not removed until August 1, 1963. (D.A. 318, 345-346.) More-

over, the implication contained in the third question that the president was removed without being allowed to serve is in the face of the undisputed facts that he had served ten and one-half years prior to his removal for alleged misconduct as president during the two and one-half years prior to removal. (D.A. 318.)

4. The fourth question assumes that there is "a state cause of action for the arbitrary removal by the international of the president of the local . . ." The Court of Appeals noted in its decision, with respect to this contention, that "they cite no cases to support their position, . . ." (Pet. 7a.) The Court of Appeals, however, found it unnecessary to resolve this issue, holding that there was no jurisdiction over the removal created under the theory of pendent jurisdiction. Petitioners have therefore improperly assumed the existence of this condition precedent to Question 4 without submitting any authorities to the Courts below in substantiation of their position.

Moreover, it is wrongfully asserted in Question 4 that the District Court made a finding "that the evidence introduced on the issue of the illegality of the trusteeship also establishes the illegality under state law of the removal of the president." Once again, no such finding is contained in either the findings of fact of the District Court or of the Petitioners. This was but a conclusion of law prepared by the Petitioners. (D.A. 355-356.) As shown in our argument, *infra*, this conclusion is obviously erroneous.

STATEMENT.

Petitioners' statement is not "a concise statement of the case containing facts material to the consideration of the questions presented," as required under Rule 23 of the Rules of the Supreme Court. Respondents will make no attempt herein to rebut the self-serving, unsupported

and improper statements and conclusions contained in Petitioners' Statement. We merely advise the Court that a full and accurate statement of facts with supporting references to the record is contained in Defendants-Appellants' Brief before the Court of Appeals, said brief having been made a part of the record before this Court. (Pp. 4-27.) In this brief, Respondents will rely exclusively upon the facts set forth in the decision of the Court of Appeals below, which, we submit, are completely sufficient for a full consideration of all matters presented in the Petition. (Pet. 1a-4a, 6a.)

REASONS FOR DENYING THE WRIT.

Petitioners have failed to frame their argument around the four questions they present. Nevertheless, in this response, we shall attempt to follow these four questions.

I.

REVIEW IS NOT WARRANTED ON THE QUESTION OF WHETHER SECTION 101 (a)(5) OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT COVERS THE REMOVAL OF A UNION OFFICER FOR ALLEGED MISCONDUCT IN OFFICE.

A. There Is No Conflict Over This Question in the Lower Federal Courts.

It is undisputed that Quinn was removed from office on charges of misconduct in office. (Pet. 3a-4a.) The Court below, as well as the Third and Ninth Circuits and twelve federal district courts, have held that there is no jurisdiction under the Act over the removal of a union officer when the removal is based upon a charge of *misconduct as an officer*. *Sheridan* v. *United Brotherhood of Carpenters*, 306 F. 2d 152, 156 (3d Cir. 1962); *Grand Lodge* v. *King*, 56 L. R. R. M. 2639, 2640 (9th Cir. 6-23-64), pet. for cert.

pending, No. 456, this term; *Mirra* v. *Highway Freight Drivers*, ... F. Supp. ..... (D. C. N. J. 4-27-64), 56 L. R. R. M. 2127; *Csokuly* v. *Loblaw, Inc.*, ... F. Supp. ..... (D. C. W. D. Pa. 2-24-64), 56 L. R. R. M. 2527; *Bennett* v. *Hoisting and Portable Engineers*, 207 F. Supp. 361 (D. C. Ore. 1960); *Peters* v. *Steelworkers*, ... F. Supp. ..... (D. C. Ind. 5-1-64); *Vars* v. *Boilermakers*, 204 F. Supp. 245, 248 (1962); *Grasso* v. *Phillips*, ... F. Supp. ..... (N. D. N. Y. 1962), 50 L. R. R. M. 2079; *Mamula* v. *Steelworkers*, 205 F. Supp. 915 (W. D. Pa. 1962); *Kelly* v. *Streho*, ... F. Supp. ..... (E. D. Mich. 1961), 47 L. R. R. M. 2609; *Hamilton* v. *Guinan*, 199 F. Supp. 562 (S. N. Y. 1961); *Burton* v. *Packinghouse Workers*, 199 F. Supp. 138 (D. Kan. 1961); *Jackson* v. *The Martin Company*, 180 F. Supp. 475 (D. Md. 1960); *Strauss* v. *Teamsters*, 179 F. Supp. 297 (E. D. Pa. 1959). There is not a single case holding to the contrary.

In an attempt to establish a conflict between the Seventh Circuit below and other circuits, Petitioners cite cases from the Second, Third and Ninth Circuits involving removal from office *not* for misconduct as an officer—but for the exercise of rights guaranteed members under Title I of the Act. *Salzhandler* v. *Caputo*, 316 F. 2d 445 (2d Cir. 1963); *Sheridan* v. *Brotherhood of Carpenters*, 306 F. 2d 152 (3d Cir. 1962) and *Grand Lodge* v. *King*, 56 L. R. R. M. 2639 (9th Cir. 1964). The issue in all three of these cases was the applicability of Section 609 of the Act under these circumstances. The Second and Ninth Circuits held that Section 609 was applicable; Judge Kalodner of the Third Circuit held it was not. It is opined in both *Sheridan* and *Grand Lodge* that "the mean Congress chose to accomplish its purpose was to wholly exclude suspension or removal from union office from the category of union action to which section 101 (a) (5) applied." No mention is made of Section 101 (a) (5) in *Salzhandler*. Therefore, the conflict be-

tween Circuits is over the issue of whether removal from office for the exercise of guaranteed Title I rights constitutes "discipline" under Section 609; all of the reported decisions conclude that removal from office for any reason whatsoever does not constitute "discipline" under Section 101 (a) (5).

Petitioners attempt to bring before this Court the merits of their argument by arguing the legislative history of Section 101 (a) (5). (Pet. 12-14.) We believe that this is improper on a petition for a writ of certiorari, and we will not engage in a protracted rebuttal. Suffice it to say that the legislative history was argued at length before the Court below (Brief for Defendants-Appellants 36-38; Brief for Plaintiffs-Appellees 42-51; Reply Brief for Defendants-Appellants 16-18), which relied upon the legislative history in support of its holding (Pet. 7a), as did most of the other fourteen federal courts that have considered this question. Not a single decision contains a construction of the legislative history along the lines suggested by Petitioners.

B. No Important Question of Federal Law Was Decided.

The Court below did not decide any question involving substantive rights of the Petitioner Quinn. The question entertained pertained only to the issue of whether the jurisdiction of the federal courts was enlarged by Section 101 (a) (5) to include the subject matter of the removal of a union officer from office. Clearly the state courts have jurisdiction over this subject matter. Therefore the question is merely whether Quinn has alternative forums in which to seek a remedy or whether he is limited to a single forum.

II.

NO IMPORTANT QUESTION OF FEDERAL LAW IS RAISED IN PETITIONERS' QUESTION 2.

Question 2 is so garbled that we have difficulty even paraphrasing it. As pointed out in our treatment of the question, *supra*, many misstatement and inaccuracies are contained in the question. However, even notwithstanding these defects, no important question of federal law can be gleaned from the question, and Petitioners' argument does not even suggest that any important federal question is involved. Indeed, we have some doubts as to whether this question has been treated at all in Petitioners' argument.

III.

REVIEW IS NOT WARRANTED OVER THE QUESTION OF WHETHER SECTION 101 (a)(1) OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT GRANTS TO UNION MEMBERS OTHER THAN A DEPOSED UNION OFFICER THE RIGHT TO SUE FOR HIS REINSTATEMENT.

A. The Statutory Section on Its Face Cannot Be So Construed.

Section 101 (a) (1), entitled "Equal Rights," affords union members equal rights "to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings . . . " It does not afford union members a right to reinstate officers deposed in accordance with the union constitution or to prevent the removal of union officers charged with misconduct. As is apparent from the title of the section, union members were afforded certain "equal rights"

with one another. The question raised by Petitioners poses no issue of equality of rights.

B. There Is No Conflict Over This Question in the Lower Federal Courts.

A conflict over this issue is lacking in the Courts of Appeals or even in the District Courts because the recorded cases fail to disclose that anyone has ever before suggested such a construction of the statutory section; indeed, it was not even argued seriously before the Court of Appeals in the instant case. We note that no legislative history or other authority has been cited by Petitioners either here or below in support of their position. In effect, the argument is that although the Joint Conference Committee went to the trouble of declaring that a deposed officer could not maintain a claim under Section 101 (a) (5), he could have any other member of the union maintain the claim for him under Section 101 (a) (1). The absurdity of the proposition is manifest from its statement.

IV.

REVIEW IS NOT WARRANTED OVER THE ISSUE RAISED AS TO THE APPLICABILITY OF THE DOCTRINE OF PENDENT JURISDICTION.

A. There Is No Conflict Over This Question in the Lower Federal Courts.

This Court in *Hurn* v. *Oursler*, 289 U. S. 238 (1933), established as requisite to a claim of pendent jurisdiction that the federal and non-federal claims presented must be but different grounds asserted in support of a single cause of action, defining a cause of action at page 246:

> "A cause of action does not consist of facts . . . but of the unlawful violation of a right which the facts

> show. The number and variety of the facts alleged do not establish more than one cause of action so long as their result, whether they be considered severally or in combination, is the violation of but one right by a single legal wrong. The facts are merely the means, and not the end. They do not constitute the cause of action, but they show its existence by making the wrong appear."

Petitioners do not overtly ask this Court to reconsider and reverse *Hurn* but contend that there is a conflict between the Court below which followed *Hurn* and decisions from the First, Second, Third, Fourth, Sixth and Ninth Circuits which they imply did not follow *Hurn*. They cite a number of decisions from those circuits, none of which establish any conflict, because they each follow the *Hurn* doctrine as set forth above. Although none of the cited decisions involve the Labor-Management Reporting and Disclosure Act, they each involve a claim or cause of action cognizable under both federal and state law with similar remedies available under both. (See analysis of these cases in Answer to Petition for Rehearing, 11-13.) Thus these decisions from other circuits come within the ambit of *Hurn* and the holding of the Court below that "in order to have pendent jurisdiction, there must be a single cause of action or wrong arising out of one set of operative facts, ostensibly redressible by federal law but also redressible by state law." (Pet. 7a)

As stated above, Petitioners cite no Labor-Management Reporting and Disclosure Act cases in support of their contention that there is a conflict. There are at least three reported decisions in which federal courts, when confronted with a claim properly under the Act and a claim held not properly brought under the Act, have dismissed the non federal claim, failing or refusing to apply the doctrine of pendent jurisdiction. *Vars* v. *Boilermakers*, 204 F. Supp. 245 (1962), Affmd. 320 F. 2d 576 (2d Cir. 1963); *Robbins* v. *Rarback*, 325 F. 2d 929 (2d Cir. 1963); *Mirra* v. *Highway*

Freight Drivers, ... F. Supp. ..... (D. C. N. J. 4-27-64), 56 L. R. R. M. 2127.

B. The Decision in the Instant Case Is Manifestly Consistent With the Hurn Doctrine.

In the instant case, the trusteeship and removal from office claims involve non-identity of parties as well as different issues, and different remedies are sought. There is a non-identity of plaintiffs. The plaintiffs in the Title III trusteeship action are Quinn, other individual members of the local union, and the local union itself. This joinder of plaintiffs is permissible under Section 304 (a), which provides: "Any member or subordinate body of a labor organization affected by any violation of this title . . . may bring a civil action in any district court of the United States . . ." However, in Quinn's action for removal from office, Quinn, as the disciplinee, is the only proper party plaintiff under Section 102 of Title I of the Act (assuming its applicability), which provides: "Any person whose rights secured by the provision of this Title have been infringed by any violation of this Title may bring a civil action in a district court of the United States . . ." Similarly, Quinn would be the only proper plaintiff in a state cause of action concerning his removal from office.

Likewise, there is a non-identity of defendants in the instant action. Pursuant to Section 304 of the Act, the trusteeship count can be brought solely against the international union that had imposed the trusteeship. However, the removal from office count names as defendants not only the international union, but numerous individual officers and members of the international union, who presumably played a part in the removal action.

Moreover, the issues raised by a trusteeship claim and a removal from office claim contain little similarity. Under

Title III of the Act, the instant trusteeship must be presumed valid and not subject to attack if established in conformity with the procedural requirements of the union's constitution and by-laws and authorized or ratified after a fair hearing before the International Executive Council, unless there is clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures or otherwise carrying out the legitimate objects of such labor organizations. (Pet. 10a-11a.) The issues raised in Quinn's removal from office claim are whether he was deprived of a fair hearing by reason of the bias and partiality of the International Executive Council as a body, the presence and participation of counsel for the International union at Quinn's hearing while Quinn's lawyers were excluded from the hearing, the introduction of evidence against Quinn which he was not given an opportunity to answer, and the lack of evidence to support the charges. (These are the issues constituting Quinn's claim, according to Petitioners. Pet. 6. It is unnecessary to discuss whether they are factually supported in the record.)

Clearly, the issues of illegal trusteeship and improper removal from office are not the same, and this was indicated in the decision of the Court below. Likewise, the remedies sought are entirely different, one being termination of a trusteeship (which has already been terminated) and the other being reinstatement of an individual to local union office. Petitioners' self-serving conclusion of law, which they prepared, that all of the evidence introduced with respect to one claim was equally applicable to the other claim is obviously sheer nonsense in view of the difference in issues and parties and rights of parties under each claim, and was reversed by the Court below.

Therefore, the manner of resolving the pendent jurisdiction issue raised in the instant case is so abundantly clear under the *Hurn* doctrine that review of the scope of pendent jurisdiction as related to this case is manifestly unwarranted. Moreover, to argue, as Petitioners do, that the Court should reconsider its long-standing *Hurn* doctrine in the light of the purported right of a deposed union officer to attach his grievance to a federal claim contesting the illegality of a trusteeship over a local union is to disregard the lack of any existing conflict in the federal courts over this question as well as the lack of any compelling reason militating in favor of such a reconsideration.

CONCLUSION.

Petitioners have shown this Court a morass of factual material intertwined with legal conclusions as set forth in voluminous findings and conclusions which they prepared for the District Court. They raise questions seeking the construction of two sections of Title I of the Labor-Management Reporting and Disclosure Act. The first question has been resolved unanimously by fifteen lower courts. The second question is so preposterous that no court has even considered it. The other questions are but an outgrowth of Petitioners' morass of facts and conclusions rather than a clear certification of any important federal question. Manifestly, under such circumstances, the review of the Supreme Court of the United States is not required.

Respectfully submitted,

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